

MONTANA PUBLIC DEFENDER COMMISSION
LEGISLATIVE COMMITTEE MEETING
Helena Goodkind Building and Conference Call

March 10, 2014

MINUTES

(Approved at the March 27, 2014 Meeting)

Committee Members Present:

Fritz Gillespie, Chair (Helena)
Brian Gallik (Bozeman), by phone
Ann Sherwood (Pablo), by phone

Committee Members Absent:

Roy Brown (Billings)
Majel Russell (Billings)

Agency Team Members Present:

Harry Freebourn, Administrative Director
Bill Hooks, Chief Public Defender
Kristina Neal, Conflict Coordinator
Wade Zolynski, Chief Appellate Defender
Jessie Reehl (recorder), Administrative Assistant

Interested Parties

Steven Scott, MCU Attorney/Union Liaison

Call to Order

Committee Chair Fritz Gillespie called the meeting of the Legislative Committee to order at 9:10 a.m.

Potential Legislation:

IQ Household Definition

The current definition of household according to Title 47 Montana Code Annotated (MCA) was evaluated in order to determine if it fits the needs of the agency as it relates to eligibility determinations. The definition as it currently stands leaves questions surrounding “gross household income” and the exclusion of college roommates from the defined household. There is no current draft established, this currently acts as a placeholder. Chief Hooks recommended that the committee take from the cross-reference (15-30-2337) listed within 47-1-111 MCA the definition of household and include it in Title 47, eligibility determination. This definition has already been incorporated into the recently amended and adopted Policy 105, Determination of Indigence. It was determined that Title 47-1-111, MCA does not require an amendment because the definition of household as written in Title 15 is referenced within Title 47 and because the agency has implemented this definition through internal policy and action.

Flat Fee Contracts

House Bill 93 from the previous Legislative Session was presented for review. Chairman Gillespie asked the committee to make recommendations for improvement of the bill considering its failure during the previous session. Suggestions will be discussed at the next meeting.

Removing Jail Time for Certain Misdemeanors

Chairman Gillespie presented Senate Bill 53 from last session, removing jail time for certain misdemeanors. He noted that opposition to the removal of jail time may be reduced if the definition of contempt is revised by amending 3-1-501, MCA. Another possibility might be drafting an entirely new section under Title 3 to define contempt and provide for the ability to modify fines owed pursuant to being found in contempt. Mr. Freebourn reminded the committee that only a short title and general concepts are required for presentation to the governor's office.

Concealed Weapons for OPD Investigators

Chairman Gillespie proposed that the Public Defender Commission sponsor the legislation supporting the ability of the Office of the State Public Defender (OPD) criminal investigators to carry concealed weapons (see Senate Bill 133). Further action will be taken at the next meeting.

Remove State Special Revenue and Replace with General Fund

Mr. Freebourn suggested draft legislation and fiscal note to remove the state special revenue fund and replace it with the general fund. An alternative yet far more controversial option to this legislation may be to transfer the accounting responsibility to the courts. Mr. Freebourn also reminded the committee of LC1717 in the previous session which proposed a transfer to the clerks of court for the accounting of state special revenue and also required that any payment owed by individuals who are incarcerated be suspended. Chairman Gillespie requested that a counterpart from the Department of Corrections be sought out to support draft legislation. Required OPD reporting to the legislative fiscal analyst at 47-1-201 (10) (b), MCA needs to be reviewed.

\$50 Stipend for Commission Members

Chairman Gillespie advised the committee that the proposal to pay commission members \$50 per meeting did not gain significant traction at the February 24, 2014 meeting. The topic will be discussed at the next meeting in order to determine if legislation is supported and should be drafted.

Modify the Definition of Indigence 47-1-111(3)

Chief Zolynski recommended that Title 47-1-111 MCA be reconstructed in order to better redefine eligibility qualifications, particularly within subsections A and B. He believes that the way the statute currently reads may result in qualifying some individuals who may not be entitled to court-appointed counsel. The definition of disposable income was also discussed and may require some clarification.

Amend 47-1-111 to Permit Regional Deputy Public Defender Input

Chief Hooks discussed the rationale behind this change. The committee does prefer that legislation is offered to clarify this task so as to remove it as a potential future audit issue.

Modify the Definition of Contempt 3-1-501 MCA

This was covered earlier during the discussion regarding removing jail time for certain misdemeanors (SB 53).

Clarify the Court's Consideration of the Eligibility Process

Chief Hooks' proposed legislation to expand 47-1-111 MCA subsection 1 addresses the court's considerations of the eligibility process. Chief Hooks presented a draft proposal to expand upon subsections of 47-1-111 MCA. The proposed amendments seek to clarify the role of the judicial branch within the process of determining eligibility for court-appointed counsel as well as permit the Regional Deputy Public Defender to be involved in the eligibility determination process. Chairman Gillespie advised the committee of the need to develop more specific criteria for hardship determinations based upon the cost that an individual may pay to obtain private counsel for a specific case within a specific region. Such criteria would provide some supporting evidence for a hearing in which OPD has moved to withdraw as counsel for a defendant deemed ineligible for court-appointed counsel. The committee made recommendations for improvement to the proposed legislation.

Public Comment

No public comment was offered.

Adjourn

The meeting adjourned at 10:45 a.m.